

Maurer School of Law: Indiana University

Digital Repository @ Maurer Law

Articles by Maurer Faculty

Faculty Scholarship

2020

Developments in the Laws Affecting Electronic Payments and Financial Services

Tom Kierner

Womble Bond Dickinson, LLP, Tom.Kierner@wbd-us.com

Steve Middlebrook

Womble Bond Dickinson, LLP, Steve.Middlebrook@wbd-us.com

Sarah Jane Hughes

Indiana University Maurer School of Law, sjhughes@indiana.edu

Follow this and additional works at: <https://www.repository.law.indiana.edu/facpub>



Part of the [Banking and Finance Law Commons](#)

Recommended Citation

Kierner, Tom; Middlebrook, Steve; and Hughes, Sarah Jane, "Developments in the Laws Affecting Electronic Payments and Financial Services" (2020). *Articles by Maurer Faculty*. 2900.

<https://www.repository.law.indiana.edu/facpub/2900>

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Repository @ Maurer Law. It has been accepted for inclusion in Articles by Maurer Faculty by an authorized administrator of Digital Repository @ Maurer Law. For more information, please contact rvaughan@indiana.edu.



LAW LIBRARY
INDIANA UNIVERSITY
Maurer School of Law
Bloomington

Developments in the Laws Affecting Electronic Payments and Financial Services

By Tom Kierner, Stephen T. Middlebrook,**
and Sarah Jane Hughes****

I. INTRODUCTION

Federal and state developments affecting e-payments and financial services between June 1, 2018, and May 31, 2019, as in recent years, exceeded the space allowed for this survey. We have chosen to feature continuing regulatory efforts, including new guidance and innovations in cryptocurrencies as payments methods or as tradable “digital assets,” and enforcement actions related to cryptocurrencies and to providers and users of cryptocurrencies. This survey also identifies guidance and enforcement actions that relate to providers of other types of financial products or services. Part II evaluates developments relating to cryptocurrencies, both as payment products and otherwise as “digital assets” or “tokens” offered to the public that may meet requirements for “investment contracts” that the United States regulates as “securities.” Part III covers developments for other payment and financial products. Part IV offers conclusions and predictions of “hot topics” for the coming survey year.

* Tom Kierner is an associate at Womble Bond Dickinson (US). Prior to that, he was assistant general counsel at a payments company. He can be reached at Tom.Kierner@wbd-us.com.

** Stephen T. Middlebrook is of counsel to Womble Bond Dickinson (US). Prior to that, he was the general counsel at two fintech companies and senior counsel at the U.S. Department of the Treasury. He is co-chair of the Electronic Payments and Financial Services Subcommittee of the ABA Business Law Section's Cyberspace Law Committee. He can be reached at Steve.Middlebrook@wbd-us.com.

*** Sarah Jane Hughes is the University Scholar and Fellow in Commercial Law at Indiana University's Maurer School of Law. She is co-chair of the Electronic Payments and Financial Services Subcommittee of the ABA Business Law Section's Cyberspace Law Committee. She can be reached at sjhughes@indiana.edu and be found virtually at SSRN = 408848.

We thank Professor Jennifer B. Morgan of the Jerome Hall Library at Indiana University, and Cody Galvan, Maurer School Class of 2021, for assistance with this survey. All mistakes, however, remain ours.

II. FEDERAL DEVELOPMENTS AFFECTING PROVIDERS OF CRYPTOCURRENCIES, “DIGITAL ASSETS,” OR “TOKENS”

During the survey period, federal and state regulatory and law enforcement agencies issued guidance and took civil and criminal actions against cryptocurrency providers and users.

A. SEC PUBLISHES FRAMEWORK FOR “INVESTMENT CONTRACT” ANALYSIS OF DIGITAL ASSETS

On April 3, 2019, the Securities and Exchange Commission (“SEC”) published its *Framework for “Investment Contract” Analysis of Digital Assets*,¹ articulating the factors it will consider when determining whether a digital asset (sometimes called a “token”) constitutes an “investment contract” under federal securities law. The document reiterates the SEC’s reliance on the *Howey* test under which an investment contract exists when there is (1) an investment of money in (2) a common enterprise with (3) a reasonable expectation of profits to be (4) derived from the efforts of others.² The framework also identifies characteristics of a digital asset that would suggest that it is not an investment contract, including the fact that the digital asset can immediately be used for its intended purpose, that the underlying distributed ledger technology is already fully developed and operational, that the token is designed to meet the needs of users rather than speculators, and that the prospects for the digital assets’ appreciation in value are limited.³ The SEC also noted that factors laid out in the framework are not intended to be exhaustive and encouraged market participants to seek the advice of securities counsel and to engage with agency staff.⁴

B. FINCEN REISSUES PRIOR GUIDANCE ON CONVERTIBLE VIRTUAL CURRENCIES AND INCLUDES ENFORCEMENT ACTIONS IN ONE PUBLICATION, AND ISSUES NEW ADVISORY ON ILLICIT CRYPTO ACTIVITY

On May 9, 2019, FinCEN issued guidance (“*2019 CVC Guidance*”)⁵ to financial institutions regarding business models involving convertible virtual currencies (“CVC”). This guidance explains how FinCEN’s “money services business”

1. *Framework for “Investment Contract” Analysis of Digital Assets*, U.S. SEC. & EXCHANGE COMMISSION (Apr. 3, 2019), <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>.

2. *Id.* § II (citing *SEC v. W. J. Howey Co.*, 328 U.S. 293, 298–99 (1946)).

3. *Id.* § II.C.3.

4. *Id.* § III.

5. FIN. CRIMES ENF’T NETWORK, APPLICATION OF FINCEN’S REGULATIONS TO CERTAIN BUSINESS MODELS INVOLVING CONVERTIBLE VIRTUAL CURRENCIES, FIN-2019-G001 (May 9, 2019) [hereinafter 2019 CVC GUIDANCE], <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>. The Financial Crimes Enforcement Network (“FinCEN”) is a bureau of the U.S. Department of the Treasury. *What We Do*, FINCEN, <https://www.fincen.gov/what-we-do> (last visited Sept. 12, 2019).

registration requirements⁶ apply to “domestic and foreign-located . . . money transmitters doing business in whole or in substantial part within the United States, even if the foreign-located entity has no physical presence in the United States.”⁷ “Money services businesses”⁸ required to register with FinCEN also must comply with FinCEN’s Bank Secrecy Act regulations, including having written anti-money-laundering compliance programs⁹ and customer-identification programs,¹⁰ among other things. The 2019 CVC Guidance restates and explains guidance that FinCEN has issued since its original CVC guidance in March 2013.¹¹ The new guidance document also covers prior administrative rulings and applicable FinCEN regulations.¹² This guidance defines various “business models” that may give rise to coverage by FinCEN’s 2011 rule relating to money services businesses,¹³ provides information on CVC transactions that may be exempt from FinCEN’s definition of “money transmission,”¹⁴ and charts all of FinCEN’s guidance and administrative rulings that reference CVCs.¹⁵ Of special significance to emerging forms of virtual currency is the guidance’s discussion of “anonymity-enhanced” CVC transactions, specifically including those transactions that either are denominated (1) “in regular types of CVC, but structured to conceal information otherwise generally available through the CVC’s native distributed public ledger,” or (2) “in types of CVC specifically engineered to prevent their tracing through distributed public ledgers (also called privacy coins).”¹⁶

On May 9, 2019, FinCEN also issued an *Advisory on Illicit Activity Involving Convertible Virtual Currency*.¹⁷ FinCEN explains that financial institutions may use this advisory to help identify and report suspicious activity related to how criminals and “other bad actors exploit CVCs for money laundering, sanctions evasion, and other illicit financing purposes.”¹⁸ FinCEN highlighted its concerns

6. See 31 U.S.C. § 5330 (2018) (requiring registration by one who owns a “money transmitting business” within 180 days after business starts); *id.* § 1022.380 (requiring re-registration every two years by any “money services business”).

7. 2019 CVC GUIDANCE, *supra* note 5, at 12.

8. 31 C.F.R. § 1010.100(ff) (2018) (defining “money services business”).

9. *Id.* § 1022.210.

10. *Id.* § 1010.220 (imposing customer-identification-program requirements on any “financial institution”).

11. See 2019 CVC GUIDANCE, *supra* note 5, at 2, 7–12; FIN. CRIMES ENF’T NETWORK, APPLICATION OF FINCEN’S REGULATIONS TO PERSONS ADMINISTERING, EXCHANGING, OR USING VIRTUAL CURRENCIES, FIN-2013-G001 (Mar. 18, 2013), <https://www.fincen.gov/resources/statutes-regulations/guidance/application-fincens-regulations-persons-administering>.

12. 2019 CVC GUIDANCE, *supra* note 5, at 2, 7–12.

13. *Id.* at 3–7; Fin. Crimes Enf’t Network, Bank Secrecy Act Regulations; Definitions and Other Regulations Relating to Money Services Businesses, 76 Fed. Reg. 43585 (July 21, 2011) (to be codified at 31 C.F.R. pts. 1010, 1021 & 1022).

14. 2019 CVC GUIDANCE, *supra* note 5, at 23–28.

15. *Id.* at 30.

16. *Id.* at 18; see *id.* at 18–21.

17. FIN. CRIMES ENF’T NETWORK, ADVISORY ON ILLICIT ACTIVITY INVOLVING CONVERTIBLE VIRTUAL CURRENCY, FIN-2019-A003 (May 9, 2019) [hereinafter FINCEN 2019 ILLICIT ACTIVITY ADVISORY], <https://www.fincen.gov/sites/default/files/advisory/2019-05-10/FinCEN%20Advisory%20CVC%20FINAL%20508.pdf>.

18. *Id.* at 1.

about activities including “darknet marketplaces, peer-to-peer . . . exchangers, foreign-located Money Service Businesses . . . , and CVC kiosks.”¹⁹ FinCEN also explains that its *Advisory* applies to “any decentralized ledger-based currency or CVC.”²⁰ This *Advisory* discusses risks posed by CVCs,²¹ contains a list of “red flags” to assist financial institutions in identifying customers and transactions for additional scrutiny and reporting,²² and describes specific law enforcement actions.²³

C. OFAC ACTIONS PERTAINING TO VIRTUAL CURRENCIES AND SANCTIONS DESIGNATIONS OF BITCOIN ADDRESSES

The U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) implements and enforces federal statutes and executive orders that prohibit U.S. persons from engaging in transactions with individuals, organizations, certain governments, or with individuals, organizations, governments or purposes not covered by specific “licenses” that federal agencies may issue for transactions. During the survey period, OFAC used its authorities in transactions involving cryptocurrencies, issuing new guidance, listing two Iranian individuals and their Bitcoin addresses as Specially Designated Nationals (“SDNs”) with whom no U.S. person may do business—and one of its actions caused the Maduro government in Venezuela to file a complaint with the World Trade Organization (“WTO”).

OFAC has expanded its FAQ guidance on U.S. sanctions against persons using cryptocurrencies and other electronic payments methods.²⁴ The FAQs previously defined terms such as “virtual currency,” “digital currency,” “digital currency wallet,” and “digital currency address.”²⁵ Additional guidance from June 6, 2018, and November 28, 2018 focuses on how OFAC lists digital currency-related addresses on the SDN List,²⁶ methods to block digital currency,²⁷ and timing of reporting blocked digital currency to OFAC.²⁸

On November 28, 2018, OFAC designated Iran-based individuals as facilitators of malicious cyber activity—specifically the “SamSam” ransomware attacks involving more than 200 victims—and identified 7,000 Bitcoin transactions

19. *Id.* For more information on “darknet marketplaces,” see *A Primer on Darknet Marketplaces: What They Are and What Law Enforcement Is Doing to Combat Them*, FED. BUREAU OF INVESTIGATION (Nov. 1, 2016), <https://www.fbi.gov/news/stories/a-primer-on-darknet-marketplaces>; *ICE Investigators Expose Darknet Criminals to the Light*, U.S. IMMIGR. & CUSTOMS ENFORCEMENT (Nov. 15, 2017), <https://www.ice.gov/features/darknet>.

20. FINCEN 2019 ILLICIT ACTIVITY ADVISORY, *supra* note 17, at 2 n.4.

21. *Id.* at 1–2.

22. *Id.* at 7–10.

23. *Id.* at 3–7.

24. Office of Foreign Assets Control, OFAC FAQs: *Sanctions Compliance*, U.S. DEP’T TREASURY (July 2, 2019), https://www.treasury.gov/resource-center/faqs/sanctions/pages/faq_compliance.aspx. (addressing pertinent issues at paras. 559–63, 594, 646–47).

25. *Id.* at para. 559 (added Mar. 19, 2018).

26. *Id.* at para. 563 (added June 6, 2018).

27. *Id.* at para. 646 (added Nov. 28, 2018).

28. *Id.*

the Iranians had handled since 2013.²⁹ OFAC added the two Iranians and their digital currency addresses to the SDN List.³⁰ This is the first and only such designation to the end of this survey period, but it reveals that OFAC can identify by address cryptocurrencies that are being used for illicit purposes. OFAC's designations of the individuals and their digital-currency addresses blocks all their property in the possession or control of U.S. persons or within the United States or transiting through it.

On March 19, 2018, President Trump issued an Executive Order designating Venezuela's "Petro" cryptocurrency as subject to U.S. economic sanctions.³¹ In response, in December 2018, the Maduro government filed a complaint against the United States, formally a request for consultations, in the WTO.³² The request for consultations states the basis for the complaint as "[d]iscriminatory coercive trade-restrictive measures with respect to transactions in Venezuelan digital currency, adopted pursuant to Executive Orders 13808, 13827 and 13835" and cites to provisions of the GATT and GATS implicated by the Executive Orders.³³ We believe this is the first complaint to the WTO against the United States involving U.S. sanctions programs. On March 14, 2019, Venezuela requested appointment of a panel to hear its complaint,³⁴ a step in the consultation process.

D. COURTS AND REGULATORS CLARIFY APPLICATION OF STATE MONEY TRANSMITTER LAWS TO FINTECH COMPANIES AND VIRTUAL CURRENCY BUSINESSES

1. Appeals Court Rejects Application of Pennsylvania Money Transmitter Act to Fintech

State money transmission statutes are old and geared to traditional over-the-counter money transmission services, making them difficult to apply to more modern business practices. The Pennsylvania Department of Banking and Securities ("PDBS"), nonetheless, interpreted its statutes to encompass Internet and

29. Press Release, Office of Foreign Assets Control, U.S. Dep't of the Treasury, Treasury Designates Iran-Based Financial Facilitators of Malicious Cyber Activity and for the First Time Identifies Associated Digital Currency Addresses (Nov. 28, 2018), <https://home.treasury.gov/news/press-releases/sm556>.

30. *Id.*

31. Exec. Order No. 13827, 83 Fed. Reg. 12469 (Mar. 21, 2018) (referencing Exec. Order No. 13808, 82 Fed. Reg. 41155 (Aug. 29, 2017), and Exec. Order No. 13692, 80 Fed. Reg. 12747 (Mar. 11, 2015)).

32. World Trade Org., *Venezuela Initiates WTO Dispute Complaint Against US Measures on Goods and Services* (Jan. 8, 2019), https://www.wto.org/english/news_e/news19_e/ds574rfc_08jan19_e.htm (referencing the WTO's General Agreement on Tariffs and Trade ("GATT") and the General Agreement on Trade in Services ("GATS")).

33. Request for Consultations by Venezuela, *United States—Measures Relating to Trade in Goods and Services* ¶¶ 3(x), 4(xi), WTO Doc. WT/DS574/1 (Jan. 8, 2019), https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/250742/q/WT/DS/574-1.pdf.

34. Request for the Establishment of a Panel by Venezuela, *United States—Measures Relating to Trade in Goods and Services*, WTO Doc. WT/DS574/2 (Mar. 15, 2019), https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/252368/q/WT/DS/574-2.pdf.

mobile payments. In May 2019, however, a state appellate court disapproved of this expansion when it reversed a PDBS determination that Givelify, LLC was engaged in money transmission without a license.³⁵ Givelify offers a mobile app to churches and other non-profit organizations that may be used to solicit donations from supporters. The app gathers information about donors—including credit card, debit card, and bank account information—and shares that data with a payment processor.³⁶ When a consumer authorizes a donation, Givelify notifies the payment processor who initiates the payment, which is then deposited in the charity's bank account.³⁷ The PDBS deemed Givelify to be engaged in the business of money transmission because its software facilitated funds transfers even though it never held or possessed any money.³⁸ The appellate court reversed, holding that under the terms of the statute, *merely handling payment information was not money transmission*: “Although Petitioner’s software application can be deemed to have acquired and ‘transmitted’ information vital to the donative transactions to [the payment processor], by no means was Petitioner ‘transmitting money’ itself, or transmitting some other ‘method for the payment’ of the donation, ‘from one person or place to another.’”³⁹

This decision is a solid rebuke to state agencies that attempt to expand their interpretation of money transmission statutes to include other activities, like acquiring and transmitting information, that may facilitate money transmission but are not themselves money transmission. The *Givelify* decision should prove useful to a variety of fintech companies that are working with banks, money transmitters, and other licensed entities to modernize payments.

2. Florida Court Holds Bitcoin Is a Payment Instrument Under Florida’s “Money Transmitter” Statute

On January 30, 2019, a Florida appeals court reinstated criminal charges of operating as an unlicensed money transmitter against a man who sold Bitcoin for cash.⁴⁰ Although acknowledging that the virtual currency does not fall within the definition of “currency” found in the state’s money transmission law, the court held Florida’s statute was still triggered because the defendant was selling “a medium of exchange, whether or not redeemable in currency,” which qualifies as a “payment instrument” covered by the law.⁴¹ The court rejected arguments that

35. *Givelify, LLC v. Dep’t of Banking & Sec.*, 210 A.3d 393 (Pa. Commw. Ct. 2019).

36. *Id.* at 395–96.

37. *Id.* at 396.

38. *Id.* (citing 7 PA. CONS. STAT. §§ 6101, 6102). The court noted that the pertinent statutory provisions had been amended in 2017, but that those amendments did not apply retroactively to the challenged conduct. *Id.* at 396 n.3.

39. *Id.* at 402 (quoting 7 PA. CONS. STAT. §§ 6101, 6102 (requiring a license to engage in the business of “transmitting money” by means of a “transmittal instrument”), and, in the last instance, BLACK’S LAW DICTIONARY 1638 (9th ed. 2009) (defining “transmit”)).

40. *State v. Espinoza*, 264 So. 3d 1055 (Fla. Dist. Ct. App. 2019).

41. *Id.* at 1063–64 (citing FLA. STAT. § 560.103(11), (21), (29) (defining “currency” as well as “payment instrument,” which refers to “monetary value,” which is defined as “a medium of exchange, whether or not redeemable in currency”)).

the defendant should not be deemed a “money transmitter” because the transactions at issue did not involve transmitting monetary value to a third party, noting that the words “to a third party” are not found in the statute.⁴² By removing the requirement that a transfer be made “to a third party,” the court expands the application of Florida’s money transmission statute to virtual currency businesses and potentially other financial services providers engaged in two-party transactions.

3. Pennsylvania Says, “Virtual Currency Exchanges” Are Not “Money Transmitters”

The PDBS issued guidance that virtual currency exchanges operating in the state do not need money transmitter licenses because “virtual currency” is not “money” under Pennsylvania’s statute and the exchanges do not handle “fiat currency.”⁴³ The PDBS also stated that operators of virtual currency ATMs, which facilitate exchanges between fiat and virtual currency, do not need licenses because there is no transmission to a third party.⁴⁴

4. Texas Aligns with Pennsylvania, Except on “Stablecoins”

In early 2019, the Texas Department of Banking also excluded some virtual currencies from its “money transmitter” statute,⁴⁵ but carved out “stable coins” from its guidance.⁴⁶ The Supervisory Memorandum explained that certain stable coins will be treated as money or monetary value so that “money transmission” will occur by their transfer:

[S]tablecoins that are pegged to sovereign currency may be considered a claim that can be converted into currency and thus fall within the definition of money or monetary value under Finance Code § 151.301(b)(3). In those instances where the stablecoin is backed by a sovereign currency reserve and a redemption right exists to the holder of the stablecoin, the holder has a claim to the sovereign backing the coin because the issuer has taken on the obligation to provide sovereign currency in exchange for the stablecoin at a later time (upon the holder’s request).⁴⁷

Thus, Texas’ position may signal a split of regulatory treatment between coins that cannot be redeemed as of right for sovereign currencies, and those that can—with future implications that are hard to predict for the crypto industry.

42. *Id.* at 1064–65 (citing FLA. STAT. §§ 560.103(23), 560.125 (defining “money transmitter” and barring unlicensed activity)).

43. PA. DEP’T OF BANKING & SEC., MONEY TRANSMITTER ACT GUIDANCE FOR VIRTUAL CURRENCY BUSINESSES (Jan. 25, 2019), <https://www.dobs.pa.gov/Documents/Securities%20Resources/MTA%20Guidance%20for%20Virtual%20Currency%20Businesses.pdf> (referencing 7 PA. CONS. STAT. § 6101 (defining “money” to mean “currency or legal tender or any other product that is generally recognized as a medium of exchange”).

44. *Id.* Pennsylvania’s position does not eliminate exchanges’ responsibilities under the 2019 CVC Guidance, which is discussed above. See *supra* notes 5–16 and accompanying text.

45. TEX. FIN. CODE ANN. §§ 151.001–151.860 (West 2013 & Supp. 2018) (“Money Services Act”).

46. TEX. DEP’T OF BANKING, SUPERVISORY MEMORANDUM—1037 (rev. Apr. 1, 2019), <https://www.dob.texas.gov/public/uploads/files/consumer-information/sm1037.pdf>.

47. *Id.* at 4.

E. CLASS ACTION LITIGATION OVER CARD ISSUERS CLASSIFYING CRYPTOCURRENCY PURCHASES AS CASH ADVANCES

With the rising popularity of certain cryptocurrencies, consumers have attempted to purchase virtual currencies using their debit and credit cards—with varying degrees of success. Some card issuers have simply blocked cryptocurrency purchases.⁴⁸ Other card issuers have chosen to categorize cryptocurrency purchases as “cash advances” subject to additional fees.⁴⁹ The imposition of cash-advance fees has resulted in class action lawsuits asserting violations of the Truth in Lending Act (“TILA”) and other laws being filed against Chase Bank,⁵⁰ Bank of America,⁵¹ and State Farm Bank.⁵²

In the *State Farm* case, plaintiffs alleged that, on multiple occasions, they paid for cryptocurrency using their State Farm credit cards and those transactions were treated as standard purchases and appeared as such on monthly statements. Beginning in February 2018, however, similar transactions were treated as cash advances and were subjected to higher fees.⁵³ Under the terms of the cardholder agreement, cash advances include “quasi-cash transactions,” which are defined as purchases of items “that are convertible to cash or similar cash-like transactions [including] money orders, travelers checks, or foreign currency or tax payments.”⁵⁴ Cash advances are assessed a per-transaction fee and are subject to a higher interest rate.⁵⁵

Plaintiffs alleged that the change in how cryptocurrency purchases were treated violated various provisions of TILA as well as the terms of the cardholder agreement.⁵⁶ Defendants moved to dismiss. The court dismissed claims that the bank failed to provide required notice of a change in terms, because it concluded that a change in how the terms of an agreement are interpreted—that is, whether the purchase of cryptocurrency constitutes a “quasi-cash transaction”—is not an actual change in terms.⁵⁷

48. Rakesh Sharma, *Capital One Blocks Cryptocurrency Purchases with Its Card*, INVESTOPEDIA (June 25, 2019), <https://www.investopedia.com/news/capital-one-blocks-cryptocurrency-purchases-its-card/> (reporting that Capital One, TD Bank and PNC Bank have blocked transactions to purchase cryptocurrency).

49. Justin Mauldin, *VISA Issuers and Mastercard Make It Harder to Buy Bitcoin and Other Cryptocurrencies*, TECHCRUNCH (Feb. 5, 2018, 2:30 PM), <https://techcrunch.com/2018/02/05/visa-and-master-card-make-it-harder-to-buy-bitcoin-and-other-cryptocurrencies/>.

50. Class Action Complaint for Violations of the Truth in Lending Act, *Tucker v. Chase Bank USA, N.A.*, No. 18-cv-03155-ER (S.D.N.Y. Apr. 10, 2018), https://www.morrisoncohen.com/siteFiles/files/2018_04_10%20-%20Tucker%20v_%20Chase%20Bank%20USA,%20N_A.pdf; see TILA, 15 U.S.C. §§ 1601–1667f (2018).

51. Class Action Complaint, *Galavis v. Bank of Am., N.A.*, No. 18-cv-09490 (C.D. Cal. Nov. 8, 2018), https://www.morrisoncohen.com/siteFiles/files/2018_11_8%20-%20Galavis%20v_%20Bank%20of%20America%20and%20Visa.pdf. The bank’s motion to dismiss was denied on March 26, 2019. *Galavis v. Bank of Am., N.A.*, No. 18-cv-09490 (C.D. Cal. Mar. 26, 2019) (order denying motion to dismiss).

52. *Eckhardt v. State Farm Bank FSB*, No. 18-cv-01180, 2019 WL 1177954 (C.D. Ill. Mar. 13, 2019).

53. *Id.* at *1.

54. *Id.* (quoting cardholder agreement).

55. *Id.*

56. *Id.* at *2.

57. *Id.* at *4.

The court also dismissed claims that, if in fact the purchase of cryptocurrency was a “quasi-cash transaction,” then the bank improperly classified the pre-February 2018 transactions as “purchases” on monthly statements. The court held that the statements accurately reflected how the transactions were treated and applied to Plaintiffs’ account, and thus complied with TILA.⁵⁸

With regard to claims that the bank’s disclosures about “quasi-cash transactions” were not clear and conspicuous, the court held that determining whether cryptocurrency was cash-like was a question of fact not properly resolved in a motion to dismiss.⁵⁹ Similarly, claims for breach of the cardholder agreement also turned on whether cryptocurrency should properly be categorized as quasi-cash and, thus, were allowed to go forward.⁶⁰

As the *State Farm*, *Chase*, and *Bank of America* cases all proceed to trial, the respective courts will have to struggle with questions about the basic nature of cryptocurrencies. Although the ultimate conclusions in these matters will, in some ways, be limited to the context of specific bank agreements and consumer financial statutes, the analytical approach taken in these cases will be as influential as the contemporaneous statements about cryptocurrency coming from regulators and legislators.

F. ACTIONS INVOLVING ACTIVITIES OF BITFINEX AND TETHER

On April 24, 2019, New York State’s Attorney General obtained an *ex parte* order under the Martin Act,⁶¹ enjoining iFinex Inc., the operator of the Bitfinex crypto trading platform, Tether Ltd., the issuer of the virtual currency tether, and others from violations of disclosure provisions of the Martin Act, pertaining to securities and commodities.⁶²

III. DEVELOPMENTS PERTAINING TO PAYROLL CARDS AND OTHER PAYMENT METHODS

A. PAYROLL CARD LITIGATION CONTINUES IN NEW YORK STATE

The surveys for 2017⁶³ and 2018⁶⁴ discussed the payroll-card regulations promulgated by the New York Department of Labor (“NY DOL”). As of May 31, 2019, the litigation challenging these regulations marches on. To recap, in September 2016, the NY DOL issued regulations regarding the methods of

58. *Id.* at *8–9.

59. *Id.* at *7.

60. *Id.*

61. N.Y. GEN. BUS. LAW §§ 352–359-h (Consol. 1999 & Supp. 2018).

62. Ex Parte Order Pursuant to General Business Law § 354, *James v. iFinex Inc.*, No. 450545/2019 (N.Y. Sup. Ct. Apr. 24, 2019).

63. Stephen T. Middlebrook, Sarah Jane Hughes & Tom Kierner, *Two Steps Forward, One Step Back: Developments in the Law Affecting Electronic Payments and Financial Services*, 73 BUS. LAW. 277, 282–83 (2017) [hereinafter 2017 Survey].

64. Stephen T. Middlebrook, Sarah Jane Hughes & Tom Kierner, *Developments in the Law Affecting Electronic Payments and Financial Services*, 74 BUS. LAW. 267, 269–70 (2018) [hereinafter 2018 Survey].

wage payment, which included regulating the use of payroll cards.⁶⁵ The regulations were the most demanding in the country. In addition to prohibiting a wide array of fee types, they prohibited employers from paying wages on a payroll debit card until seven business days after the employee consented to being paid via payroll card.⁶⁶ They also established demanding ATM access and language disclosure requirements.⁶⁷

Global Cash Card, Inc. (“GCC”), a payroll card program manager, challenged the rules before the Industrial Board of Appeals.⁶⁸ The Board sided with GCC and revoked the rules. The NY DOL petitioned a New York court to review the revocation, and the court annulled the Board’s revocation.⁶⁹ GCC appealed that decision, and the matter is pending before the Third Judicial Department of the Supreme Court’s Appellate Division.⁷⁰

As a result of the ongoing litigation, the status of the payroll card regulation enforcement is unclear. GCC did not move to stay the regulations pending litigation, and the NY DOL has not publicly opined on whether they intend to enforce the regulations.

B. THE FTC INITIATED ENFORCEMENT ACTIONS INVOLVING OTHER PAYMENTS

The FTC settled claims against a few fintech companies in the last year. In the first set of actions, the FTC brought claims against two payment intermediaries and their directors and officers, alleging they were facilitating payments to merchants perpetrating frauds. In the second, the FTC brought an enforcement action against an online consumer loan processor, alleging that some of its business practices were unfair.

1. The FTC’s Enforcement Actions Against Payment Intermediaries

The FTC recently settled cases against AlliedWallet, Inc.⁷¹ and Priority Payout Corp.,⁷² two companies that worked together to facilitate payments to merchants while knowing that those merchants were engaged in unlawful conduct.

65. 2017 Survey, *supra* note 63, at 282–83 (citing N.Y. COMP. CODES R. & REGS. tit. 12, §§ 192-1.1 to -2.3).

66. N.Y. COMP. CODES R. & REGS. tit. 12, § 192-2.3 (2019).

67. *Id.*

68. 2017 Survey, *supra* note 63, at 283 (citing Glob. Cash Card, Inc. v. Comm’r of Labor, No. PR 16-120 (N.Y. Indus. Bd. of App. Feb. 16, 2017)).

69. 2018 Survey, *supra* note 64, at 269 (citing Decision, Order & Judgment, Reardon v. Glob. Cash Card, Inc., No. 2643-17 (N.Y. Sup. Ct. May 23, 2018)).

70. Judith E. Rinearson & Eric A. Love, *Surprise: New York State Court Ruling Means that NY Payroll Card Regulations Could Go into Effect After All*, NAT’L L. REV. (July 23, 2018) (reporting that appeal was filed on July 13, 2018).

71. Stipulated Final Order for Permanent Injunction and Monetary Judgment, FTC v. AlliedWallet, Inc., No. 2:19-CV-4355-SVW-E (C.D. Cal. June 7, 2019) [hereinafter AlliedWallet Order].

72. Stipulated Final Judgment, Order for Compensatory Contempt Relief, and Supplemental Order for Permanent Injunction and Other Equitable Relief, FTC v. Interbill, Ltd., No. CV-S-06-01644-JCM-PAL (D. Nev. Apr. 10, 2019) [hereinafter Priority Payout Order].

AlliedWallet acted as a payment facilitator for what could charitably be described as high-risk merchants. Payment facilitators are payment intermediaries that register with acquiring banks to facilitate transactions on behalf of other merchants. Consumer payments are processed using the payment facilitator's account and are remitted to the merchant. There's nothing inherently illegal about this arrangement. However, AlliedWallet's high-risk merchants included an operator of a phantom debt collection scam, a pyramid scheme promoter, and other businesses that were obviously fraudsters.⁷³ AlliedWallet took steps to actively obscure the nature of the merchants' businesses from the acquiring banks and payment networks.⁷⁴

Many of these bad merchants were referred to AlliedWallet by reseller agents Thomas Wells and his company, Priority Payout—a payments company that was subject to its own 2009 FTC order⁷⁵ for assisting in perpetrating an illegal scheme by debiting bank accounts of fraud victims.⁷⁶

The FTC settled claims against AlliedWallet by imposing a \$110 million equitable judgment, which will result in AlliedWallet's liquidation.⁷⁷ Priority Payout and Wells agreed to pay \$1.8 million as a contempt judgment.⁷⁸ In addition, both Priority Payout and Wells are permanently banned from engaging in, and assisting others with, payment processing.⁷⁹

2. The FTC's Enforcement Action Against an Online Consumer Lender

Online loan processor Avant, LLC ("Avant") settled a complaint with the FTC and agreed to pay \$3.85 million in consumer redress.⁸⁰ The seven-count complaint challenged a number of Avant's marketing and payment administration practices.⁸¹

According to the FTC, Avant made personal unsecured loans to consumers in amounts ranging from \$1,000 to \$35,000.⁸² Consumers typically apply through Avant's consumer-facing website, but, in some instances, Avant's telemarketing team called consumers in an attempt to induce them to apply for loans or to complete their applications.⁸³ To qualify for a loan, a consumer had to agree to pay by automatic payments—either "remotely created checks" or preauthorized electronic funds transfer. However, because Avant is a "telemarketer" as

73. Complaint for Permanent Injunction and Other Equitable Relief at 20–33, *FTC v. AlliedWallet, Inc.*, No. 2:19-cv-4355-SVW-E (C.D. Cal. May 20, 2019).

74. *Id.* at 15–20.

75. Final Judgment and Order for Permanent Injunction and Other Equitable Relief, *FTC v. Interbill, Ltd.*, No. CV-S-06-01644-JCM-PAL (D. Nev. Apr. 30, 2009).

76. *Id.* at 2.

77. AlliedWallet Order, *supra* note 71, at 17.

78. Priority Payout Order, *supra* note 72, at 5.

79. *Id.* at 4.

80. Stipulated Order for Permanent Injunction and Monetary Judgment, *FTC v. Avant, LLC*, No. 1:19-cv-02517 (N.D. Ill. May 17, 2019) [hereinafter *Avant Judgment*].

81. Complaint for Permanent Injunction and Other Equitable Relief, *FTC v. Avant, LLC*, No. 1:19-cv-02517 (N.D. Ill. Apr. 15, 2019) [hereinafter *Avant Complaint*].

82. *Id.* at 3.

83. *Id.* at 4.

defined by the Telemarketing Sales Rule (“TSR”),⁸⁴ Avant violated the TSR by “creating remotely created [checks] as payment for . . . services . . . sold through telemarketing.”⁸⁵ Accordingly, for loans that were the result of those telemarketing efforts, there was only one payment method permissible under the TSR: electronic funds transfer. Unfortunately for Avant, conditioning the extension of credit to a consumer on the consumer’s repayment by preauthorized electronic transfer is a violation of the Electronic Funds Transfer Act (“EFTA”) and Regulation E.⁸⁶

Avant told consumers that, after their applications were approved, they could switch their payment method to another reasonable method, including credit or debit card, money order, or paper check.⁸⁷ However, in numerous instances, Avant rejected payments made by credit cards and debit cards.⁸⁸ It also failed to timely credit borrower payments made by check or money order, sometimes waiting weeks between payment and deposit and processing of the paper payment.⁸⁹

The FTC also took issue with Avant’s payment collection practices. In at least hundreds of instances, Avant allegedly debited consumers’ accounts without authorization or in excess of what was authorized, sometimes debiting the entire payoff balance without authorization.⁹⁰ Further, when borrowers requested a quote to fully satisfy the outstanding loan, Avant would provide the quote, but in many instances continued to debit accounts even after the payoff amount was furnished, stating that the prior quote was erroneous.⁹¹

Based on these business practices, the FTC alleged five claims of unfair and deceptive practices, a TSR violation, and an EFTA/Regulation E claim.⁹² In addition to requiring payment of \$3.85 million for consumer redress, which the FTC will administer, the stipulated order prohibits Avant from making misrepresentations, failing to timely process payments, and debiting borrower accounts at intervals or amounts that deviate from those for which the consumer has expressly consented.⁹³

IV. CONCLUDING THOUGHTS

In October 2018, the G20’s Financial Action Task Force (“FATF”) adopted changes to its Recommendations and Glossary to clarify how its tools to deter and detect illicit financial activities generally apply to “virtual assets” and “virtual asset service providers” (“VASPs”).⁹⁴ In early 2019, FATF signaled that, at its

84. 16 C.F.R. § 310.2(ff) (2018).

85. *Id.* § 310.4(a)(9).

86. 15 U.S.C. § 1693k(1) (2018); 12 C.F.R. § 1005.10(e)(1) (2019).

87. Avant Complaint, *supra* note 81, at 4.

88. *Id.* at 5.

89. *Id.*

90. *Id.* at 8–9.

91. *Id.* at 6–7.

92. *Id.* at 10–15.

93. Avant Judgment, *supra* note 80, at 3–12.

94. *Regulation of Virtual Assets*, FIN. ACTION TASK FORCE (Oct. 19, 2018), <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/regulation-virtual-assets.html>.

June 2019 session, it intended to adopt new anti-money-laundering requirements for virtual assets that would impose record-creation-and-maintenance responsibilities on VASPs.⁹⁵ FATF's proposed requirements are patterned after the U.S. Treasury Department's "Travel Rule" for wire transfers, which requires that information about the originators of wire transfers of \$3,000 or more be kept and moved along the path of the wire transfer.⁹⁶

FATF's 2018 and early 2019 actions—as well as the additional amendments scheduled for June 2019 after this survey year—add global efforts to regulate cryptocurrencies and other crypto assets to those we expect the federal government may consider in the next survey year. We also expect that enforcement actions focused on consumer payments will continue and that states will continue to regulate cryptocurrencies and clarify how their "money transmission" statutes govern them and their providers, providers of exchange and wallet services, and providers of payroll cards and other electronic payments and financial services at least as robustly as in recent years.

95. *Public Statement—Mitigating Risks from Virtual Assets*, FIN. ACTION TASK FORCE (Feb. 22, 2019), <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/regulation-virtual-assets-interpretive-note.html>.

96. 31 C.F.R. § 1020.410 (2018) (previously codified at 31 C.F.R. § 103.33(e), (f) (2009) (applying such requirements to banks and non-banks, respectively)).

The Business Lawyer

General Submission Guidelines

Submission Deadlines and Format. We aim to publish accepted articles between six to eight months after they are submitted to us. In some cases, we can publish articles more quickly. If your article is particularly time sensitive, please let the Production Manager know at the time of submission. Manuscripts should be submitted by **e-mail** to Diane Babal, Production Manager, at diane.babal@americanbar.org. All submissions should be in Word format, double-spaced (including footnotes), accompanied by author contact information and resumes. All footnotes should be created using Word's automatic-numbering function. Please do not use Word's footnote cross-referencing function. Manuscripts, including footnotes, ordinarily should not exceed 100 pages in length. Please include a brief synopsis (4 to 5 sentences) of your article with your submission. For further information please see the web site (www.americanbar.org/publications/the_business_lawyer).

Exclusive Consideration; First Publication. A manuscript will not be considered, and should not be submitted, if it is under consideration for publication elsewhere, nor should a manuscript under consideration for publication by *The Business Lawyer* be submitted for consideration with another publication. Absent highly unusual circumstances, *The Business Lawyer* will not publish articles that have been previously published, in whole or in part, or that are substantially similar to previously published work.

Peer Review. *The Business Lawyer* is a peer-reviewed journal, and no article will be finally accepted for publication until it has completed the peer review process, including rewriting by the author(s) to satisfy peer review comments, under the direction of the Editor-in-Chief.

Professional Objectivity. Except with the approval of the Editor-in-Chief and appropriate disclosure in text or footnote, an article will not be accepted for publication if (1) an author, or an author's firm or employer, is currently involved in any matter or proceeding, whether as party, counsel, expert witness, or otherwise, involvement in which could reasonably raise questions as to the author's objectivity with respect to the subject matter of the article, or (2) an author has received or expects to receive payment or other compensation of any type for the article.

Publication Agreement; Reprints. No article will be published in *The Business Lawyer* unless and until each author has signed the standard form of ABA Publication Agreement. The Production Manager will furnish the ABA Publication Agreement to authors. The ABA reserves the right to grant permission to reprint any article appearing in *The Business Lawyer*.

Citations and Style. In general, text and footnotes should follow the style and citation format prescribed in *The Bluebook: A Uniform System of Citation* (20th Edition). The Editors of *The Business Lawyer* may, however, in their discretion deviate from the citation format prescribed in *The Bluebook*, and the decisions of the Editors as to issues of style and citation format shall be final. For questions of style not covered by *The Bluebook*, authors should consult *The Chicago Manual of Style* (15th Edition, University of Chicago Press). Authority from esoteric sources or otherwise not readily accessible need to be submitted upon request of the Production Manager.

Student Work. Manuscripts by student authors or with student co-authors will not be considered for publication in *The Business Lawyer*, except that the winning paper in the Section of Business Law's Mendes Hershman Student Writing Contest may be considered for publication. Contest information may be obtained from Leslie Archer at the Section of Business Law leslie.archer@americanbar.org.

THE BUSINESS LAWYER

Business Law Section
American Bar Association

SPRING 2020
Volume 75, Number 2



AMERICAN **BAR** ASSOCIATION

Business Law Section



AMERICAN **BAR** ASSOCIATION™

THE BUSINESS LAWYER

ISSN 0007-6899

SPRING 2020

Volume 75, Number 2

Editor-in-Chief

PENELOPE L. CHRISTOPHOU

Cleary Gottlieb Steen & Hamilton LLP
One Liberty Plaza, New York, NY 10006
E-mail: pchristophou@cgsh.com

Associate Editor-in-Chief

GREGORY M. DUHL

Mitchell Hamline School of Law
St. Paul, MN
E-mail: Gregory.duhl@
mitchellhamline.edu

Faculty Editor

JACLYN MILLNER

Mitchell Hamline School of Law
St. Paul, MN

Faculty Editor

STEVEN J. CLEVELAND

University of Oklahoma College
of Law
Norman, OK

Production Manager

DIANE BABAL

American Bar Association
Chicago, IL
Phone: 312/988-5507
diane.babal@americanbar.org

Editorial Board

JAMES BAILLIE

Fredrikson & Byron, P.A.
Minneapolis, MN

C. STEPHEN BIGLER

Richards Layton & Finger
Wilmington, DE

NIKHIL BODADE

American Industrial Partners
New York, NY

LEIANNE S. CRITTENDEN

Oracle
Redwood City, PA

DONEENE KEEMER DAMON

Richards Layton & Finger
Wilmington, DE

DON S. DE AMICIS

Georgetown Law
Washington, DC

CATHY DIXON

Weil, Gotshal & Manges LLP
Washington DC

ALICIA DOWNEY

Downey Law LLC
Boston, MA

JAY A. DUBOW

Pepper Hamilton LLP
Philadelphia, PA

KARL J. EGE

Perkins Coie LLP
Seattle, WA

CARL F. EMIGHOLZ

Cleary Gottlieb Steen & Hamilton
LLP
Washington, DC

JEAN K. FITZSIMON

U.S. Bankruptcy Court
E District of Pennsylvania
Philadelphia, PA

MICHAEL FLEMING

UnitedHealth Group
Minnetonka, MN

JEANNIE C. FREY

CHRISTUS Health
Irving, TX

E. CHRISTOPHER JOHNSON, JR.

Center for Justice, Rights & Dignity
Coppell, TX

SCOTT LESSNE

Crowell & Moring LLP
Washington, DC

JONATHAN C. LIPSON

Temple University School of Law
Philadelphia, PA

KIMBERLY LOWE

Avisen Legal
Minneapolis, MN

THOMAS F. MORANTE

Holland & Knight
Fort Lauderdale, FL

JENNA NAND

Fortuna Law PLLC
Seattle, WA

JOHN F. OLSON

Gibson, Dunn & Crutcher LLP
Washington, DC

RICHARD W. POUND

Stikeman Elliott LLP
Montréal, QC Canada

NANCY B. RAPOPORT

William S. Boyd School of Law
Lee Business School, UNLV
Las Vegas, NV

SANDRA M. ROCKS

Cleary Gottlieb Steen & Hamilton LLP
New York, NY

JEFFREY W. RUBIN

Ellenoff Grossman & Schole LLP
New York, NY

JAMES C. SCHULWOLF

Shipman & Goodwin LLP
Hartford, CT

STEVEN O. WEISE

Proskauer Rose LLP
Los Angeles, CA

SUBMISSION OF ARTICLES

The purpose of this quarterly journal is to provide members of the legal profession and the public generally with peer-reviewed articles by individual authors or co-authors and reports and surveys by various committees of the ABA Business Law Section in the fields of law within the interest of this Section. For specific areas of interest, please see the committee listing of the Section at www.americanbar.org/groups/business_law/committees. The editor-in-chief encourages the submission of manuscripts on legal topics within any of these areas or in other legal areas of likely interest to our readers.

The dates for the submission of articles for publication are July 1 for the Winter issue, October 1 for the Spring issue, January 1 for the Summer issue, and April 1 for the Fall issue. Prospective authors should consult the submissions guidelines for manuscripts printed at the end of this issue as well as the instructions set forth at www.americanbar.org/publications/the_business_lawyer. Address all other inquiries to the Production Manager, *The Business Lawyer*, American Bar Association, 321 N. Clark St., Chicago, IL 60654, 312/988-5507, Fax: 312/988-5578.

SUBSCRIPTIONS/SINGLE ISSUES

The Business Lawyer (ISSN 0007-6899) is published quarterly in Spring, Summer, Fall, and Winter by the Business Law Section of the American Bar Association, 321 N. Clark St., Chicago, IL 60654. The subscription price per year is \$20 to members (included in \$55 dues) and \$65 to nonmembers (\$75 to nonmembers if mailed to an address outside the United States). For more information, please visit www.americanbar.org/publications/the_business_lawyer.

Single copies of individual issues from volumes 71–73 may be available for \$20 per copy from the ABA Service Center, orders@americanbar.org, 800/285-2221 or 312/988-5522. Issues from previous volumes are sold by William S. Hein & Co., 1285 Main St., Buffalo, NY 14209-1987, 800/828-7571, orders@wshein.com.

To report a **change of address** or to inquire about ABA or Business Law Section **membership**, contact: ABA Service Center, 321 N. Clark St., Chicago, IL 60654, COA@americanbar.org, 312/988-5522 or 800/285-2221.

REPRINT PERMISSION

No article may be republished in whole or in part without the written permission of the publisher. Send requests to reprint in writing to the Manager, Copyrights & Licensing, American Bar Association, 321 N. Clark St., Chicago, IL 60654, copyright@americanbar.org, 312/988-6102, fax: 312/988-6032.

DISCLAIMER

The materials contained herein represent the opinions of the authors and editors and should not be construed to be those of either the American Bar Association or the Business Law Section unless adopted pursuant to the bylaws of the Association. Nothing contained herein is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only.

POSTAL INFORMATION

Periodicals postage paid at Chicago, Illinois and at additional offices. POSTMASTER: Send address changes to *The Business Lawyer*, ABA Service Center, 321 N. Clark St., Chicago, IL 60654.

**OFFICERS OF THE SECTION OF BUSINESS LAW
AMERICAN BAR ASSOCIATION, 2019–2020**

Chair

PATRICK T. CLENDENEN
Clendenen & Shea, LLC
New Haven, CT

Chair-Elect

JEANNIE C. FREY
CHRISTUS Health
Irving, TX

Vice-Chair

PENELOPE L. CHRISTOPHOU
Cleary Gottlieb Steen & Hamilton LLP
New York, NY

Secretary

JAMES C. SCHULWOLF
Shipman & Goodwin LLP
Hartford, CT

Budget Officer

LINDA J. RUSCH
Seattle, WA

Content Officer

NORMAN M. POWELL
YOUNG CONAWAY STARGATT & TAYLOR
WILMINGTON, DE

Board of Governors Liaison

KEVIN L. SHEPHERD
Venable LLP
Baltimore, MD

Immediate Past Chair

VICKI O. TUCKER
Hunton & Williams LLP
Richmond, VA

Section Delegates to the ABA

House of Delegates

PAUL “CHIP” L. LION III
MORRISON & FOERSTER LLP
PALO ALTO, CA

BARBARA M. MAYDEN
Young Mayden LLC
Nashville, TN

CHRISTOPHER J. ROCKERS
Husch Blackwell
Kansas City, MO

STEVEN O. WEISE
Proskauer Rose LLP
Los Angeles, CA

Section Director

SUSAN DALY TOBIAS
American Bar Association
Chicago, IL

**COUNCIL OF THE SECTION OF BUSINESS LAW
AMERICAN BAR ASSOCIATION, 2019–2020**

For term ending 2020

CARA BRADLEY

Schneider Electric
Andover, MA

SYLVIA F. CHIN

White & Case LLP
New York, NY

CATHERINE T. DIXON

Weil, Gotshal & Manges LLP
Washington, DC

NEAL J. KLING

Sher Garner Cahill Richter Klein &
Hilbert, L.L.C.
New Orleans, LA

PETER V. SNELL

Gowling WLG
Vancouver, BC Canada

For term ending 2021

HOLLY J. GREGORY

Sidley Austin LLP
New York, NY

ANNE GWAL

Exelon
Newark, DE

LISA R. LIFSHITZ

Torkin Manes LLP
Toronto, ON Canada

JONATHAN C. LIPSON

Temple University School of Law
Philadelphia, PA

SHARON Z. WEISS

Bryan Cave LLP
Santa Monica, CA

For term ending 2022

KRISTEN D. ADAMS

Stetson University College of Law
Gulfport, FL

THEODORE F. CLAYPOOLE

Womble Bond Dickinson US LLP
Atlanta, GA

LINDA M. LEALI

Linda Leali P.A.
Fort Lauderdale, FL

THOMAS J. WALSH, JR.

Brody Wilkinson PC
Southport, CT

ASHLEY C. WALTER

Fenwick & West LLP
Seattle, WA

For term ending 2023

BRENDA BARRETT

Duggins Wren Mann & Romero, LLP
Austin, TX

BRIGIDA BENITEZ

Step toe & Johnson LLP
Washington, DC

KEVIN JOHNSON

NCUA
Washington, DC

RICHARD W. POUND

Stikeman Elliott LLP
Montréal, QC Canada

HEIDI STAUDENMAIER

Snell & Wilmer L.L.P.
Phoenix, AZ

FORMER CHAIRS OF THE BUSINESS LAW SECTION

2018–2019	Vicki O. Tucker, Richmond, VA	1980–1981	A. A. SOMMER, JR., Washington, DC*
2017–2018	Christopher J. Rockers Kansas City, MO	1979–1980	JOHN B. STODDART, JR., Newark, NJ*
2016–2017	William D. Johnston, Wilmington, DE	1978–1979	GEORGE WM. COOMBE, JR., San Francisco, CA
2015–2016	William B. Rosenberg, Montréal, QC, Canada	1977–1978	WILLIAM H. WEBSTER, Washington, DC
2014–2015	PAUL “CHIP” L. LION, III, Palo Alto, CA	1976–1977	WILLIAM E. HOGAN, New York, NY*
2013–2014	DIXIE L. JOHNSON, Washington, DC	1975–1976	JOHN J. CREEDON, New York, NY
2012–2013	MARTIN E. LYBECKER, Washington, DC*	1974–1975	MENDES HERSHMAN, New York, NY*
2011–2012	LINDA J. RUSCH, Seattle, WA	1973–1974	THOMAS HAL CLARKE, Atlanta, GA
2010–2011	LYNNE B. BARR, Boston, MA	1972–1973	DONALD J. EVANS, Boston, MA
2009–2010	NATHANIEL L. DOLINER, Tampa, FL	1971–1972	JOHN P. AUSTIN, San Francisco, CA*
2008–2009	KARL J. EGE, Seattle, WA	1970–1971	JOHN T. MAGINNIS, Houston, TX*
2007–2008	CHARLES, E. MCCALLUM, Grand Rapids, MI	1969–1970	RAY D. HENSON, San Francisco, CA*
2006–2007	LINDA HAYMAN, New York, NY	1968–1969	ORVEL SEBRING, Villanova, PA*
2005–2006	HON ALVIN W. THOMPSON, Hartford, CT	1967–1968	JOHN S. TENNANT, New York, NY*
2004–2005	BARBARA MENDEL MAYDEN, Nashville, TN	1966–1967	CARROLL R. WETZEL, Philadelphia, PA*
2003–2004	STEVEN O. WEISE, Los Angeles, CA	1965–1966	JOHN A. MORRISON, Kansas City, MO*
2002–2003	HAROLD S. BARRON, Chicago, IL	1964–1965	RAY GARRETT, JR., Chicago, IL*
2001–2002	HON. THOMAS L. AMBRO, Wilmington, DE	1963–1964	EUGENE J. CONROY, Short Hills, NJ*
2000–2001	AMELIA H. BOSS, Philadelphia, PA	1962–1963	GEORGE R. RICHTER, JR., Newport Beach, CA*
1999–2000	MICHAEL E. FLOWERS, Columbus, OH	1961–1962	SAMUEL B. STEWART, San Francisco, CA*
1998–1999	JAMES H. CHEEK, III, Nashville, TN	1960–1961	WILLARD P. SCOTT, Oklahoma City, OK*
1997–1998	MAURY B. POSCOVER, St. Louis, MO	1959–1960	GEORGE D. GIBSON, Richmond, VA*
1996–1997	GEORGE S. FRAZZA, New York, NY	1958–1959	GEORGE C. SEWARD, New York, NY*
1995–1996	HERBERT S. WANDER, Chicago, IL	1957–1958	HERBERT F. STURDY, Los Angeles, CA*
1994–1995	E. NORMAN VEASEY, Wilmington, DE	1956–1957	CHURCHILL RODGERS, New York, NY*
1993–1994	RICHARD M. PHILLIPS, San Francisco, CA*	1955–1956	PAUL CARRINGTON, Dallas, TX*
1992–1993	JOHN J. MCCANN, Farmington, CT	1954–1955	RAY GARRETT, Chicago, IL*
1991–1992	LARRY P. SCRIGGINS, Baltimore, MD	1953–1954	ALFRED HEUSTON, New York, NY*
1990–1991	GEORGE CLEMON FREEMAN, JR., Richmond, VA*	1952–1953	J. FRANCIS IRETON, Baltimore, MD*
1989–1990	JEAN ALLARD, Chicago, IL*	1951–1952	MALCOLM FOOSHEE, New York, NY*
1988–1989	DAVID E. NELSON, San Francisco, CA*	1950–1951	RALPH G. BOYD, Boston, MA*
1987–1988	ROBERT L. BERNER, JR., Chicago, IL	1949–1950	JOHN W. KEARNS, Chicago, IL*
1986–1987	RICHARD W. DUESENBERG, St. Louis, MO	1947–1949	BENJAMIN WHAM, Chicago, IL*
1985–1986	FRANK R. MORRIS, JR., Columbus, OH	1945–1947	SIDNEY TEISER, Portland, OR*
1984–1985	JOHN T. SUBAK, Boca Grande, FL*	1944–1945	J. KEMP BARTLETT, JR., Baltimore, MD*
1983–1984	JOSEPH HINSEY, IV, Boston, MA*	1942–1944	W. LESLIE MILLER, Detroit, MI*
1982–1983	HENRY WHEELER, Boston, MA*	1940–1942	JOHN M. NIEHAUS, Peoria, IL*
1981–1982	KENNETH J. BIALKIN, New York, NY	1938–1940	JACOB M. LASHLY, St. Louis, MO*

*Deceased

